

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34966

STATE OF IDAHO,	)	2009 Unpublished Opinion No. 502
	)	
Plaintiff-Respondent,	)	Filed: June 18, 2009
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
RAYMOND GENE CORBUS,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Elmore County. Hon. Michael E. Wetherell, District Judge.

Order awarding restitution, affirmed.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

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PERRY, Judge

Raymond Gene Corbus appeals from the district court's order awarding restitution. For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

Police officers observed Corbus's vehicle travelling at night at approximately 60 mph in a 35 mph zone. After passing the officers, Corbus accelerated even further and turned off his headlights. A chase ensued at speeds over 100 mph. After Corbus slowed to approximately 50 mph to turn onto a dirt road, his front seat passenger jumped out of the car and was knocked unconscious upon hitting the ground. Corbus's vehicle then hit a rock and came to a stop. Corbus was arrested and the passenger was air-lifted to a hospital for treatment. Corbus was charged with eluding a peace officer, I.C. § 49-1404; reckless driving, I.C. § 49-1401; and driving without privileges, I.C. § 18-8001(3). At his arraignment, Corbus entered a guilty plea to

reckless driving. Pursuant to a subsequent plea agreement, Corbus entered a conditional guilty plea to eluding a peace officer,<sup>1</sup> and the state dismissed the charge of driving without privileges. The plea agreement also provided that the state would recommend restitution for the injuries to Corbus's passenger.

The district court sentenced Corbus to a unified term of five years, with a minimum period of confinement of one and one-half years, for eluding a peace officer, and a concurrent term of 120 days for reckless driving. Several hearings were held regarding restitution for the injuries suffered by Corbus's passenger when he jumped out of the vehicle during the high-speed chase. Corbus argued that his passenger's injuries were not the result of his criminal conduct of eluding a peace officer. Rather, Corbus contended, the passenger's injuries were the result of the passenger's independent choice to flee from the police in order to avoid apprehension for a probation violation for having consumed alcohol. The district court found a sufficient causal connection between Corbus's criminal conduct and the passenger's injuries and ordered restitution in the amount of \$18,203.67. Corbus appeals.<sup>2</sup>

## II.

### ANALYSIS

Corbus argues that the district court abused its discretion by awarding any restitution for the injuries suffered by his passenger. He contends that the passenger's injuries were not the result of his criminal conduct of eluding a peace officer but, rather, were caused by the passenger's independent choice to avoid apprehension for a probation violation.

Orders for the payment of restitution to crime victims are governed by I.C. § 19-5304. *State v. Taie*, 138 Idaho 878, 879, 71 P.3d 477, 478 (Ct. App. 2003). To qualify for restitution, a claimant must be a "victim" as that term is used in the statute. I.C. §§ 19-5304(1)(e), (2). The

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<sup>1</sup> Corbus reserved the right to appeal the district court's denial of his motion to dismiss the charge of eluding a peace officer on double jeopardy grounds.

<sup>2</sup> Corbus did not file a timely appeal from his judgment of conviction. Corbus's judgment of conviction was subsequently amended to make a correction that was not pertinent to any contested issue. His brief makes a claim that his appeal is timely from the district court's amended judgment of conviction as well as the order of restitution. This is incorrect. *See State v. Payan*, 128 Idaho 866, 867, 920 P.2d 82, 83 (Ct. App. 1996). However, this is irrelevant since Corbus appeals from the district court's order awarding restitution, not the amended judgment of conviction.

determination of the amount of restitution is a question of fact for the trial court whose findings will not be disturbed if supported by substantial evidence. *State v. Hamilton*, 129 Idaho 938, 943, 953 P.2d 201, 206 (Ct. App. 1997). We will not overturn an order of restitution unless an abuse of discretion is shown. *State v. Richmond*, 137 Idaho 35, 37, 43 P.3d 794, 796 (Ct. App. 2002).

This case requires us to determine if Corbus's passenger is a "victim" as defined in I.C. § 19-5304(1)(e). That section defines "victim" as "a person or entity, who suffers economic loss or injury *as the result of the defendant's criminal conduct.*" (Emphasis added). In support of his argument that he is not responsible for his passenger's injuries, Corbus relies on *State v. Shafer*, 144 Idaho 370, 161 P.3d 689 (Ct. App. 2007). In that case, this Court held that a victim's injuries must be causally related to the defendant's criminal act in order to justify an order awarding restitution. In *Shafer*, the defendant was convicted of leaving the scene of an accident and the district court awarded restitution for the accident victim's injuries. This Court held that, inasmuch as the victim did not suffer additional or aggravated injuries as a result of Shafer's criminal act of fleeing the scene of the accident, restitution for the injuries suffered in the accident itself were improper. *Id.* at 372-73, 161 P.3d at 691-92.

This case is distinguishable from the facts of *Shafer*. *Shafer* concerned an award of restitution for injuries caused before the defendant's criminal conduct. In this case, the district court awarded restitution for injuries that were caused during, and as a result of, Corbus's criminal act of eluding a peace officer. Corbus's contention that his passenger's act of jumping out of a vehicle travelling at 50 mph was a voluntary attempt to evade apprehension for a probation violation is, at best, mere speculation about a victim's subjective intent. Although the prosecutor certainly could have done a better job of proving the passenger's status as a "victim" by presenting an affidavit from that individual explaining why he jumped from the vehicle, the facts before the district court were sufficient to support an inference that the passenger jumped from the car out of fear for his safety due to Corbus's criminal conduct of eluding. Therefore, we conclude the district court did not abuse its discretion by awarding restitution for the injuries caused to Corbus's passenger when he jumped from the moving vehicle.

### **III.**

#### **CONCLUSION**

The district court did not abuse its discretion by awarding restitution for the injuries sustained by Corbus's passenger when he jumped from Corbus's vehicle as he was eluding a peace officer. Accordingly, the district court's order awarding restitution is affirmed.

Chief Judge LANSING and Judge GUTIERREZ, **CONCUR.**